

Why is it important to identify my child’s needs for special education services as early as possible?

This lack of success in school can lead to a similar lack of success in life. As the following statistics suggest, the cost of not identifying and providing special services for children with learning disabilities is high.

- Students with learning disabilities drop out of high school at twice the rate of their nondisabled peers.
- Among children in the delinquency system tested for learning disabilities, 50 percent were found to have undetected disabilities.
- Within three to five years out of high school, 30 percent of adolescents with learning disabilities will be arrested.

What kind of help will my child receive if he or she is eligible for special education?

If your child is at least three years old and is having trouble learning, he or she may be entitled to special education and possibly to “related services.” Related services include transportation and any developmental, corrective, and other supportive services that your child may need to benefit from his or her education. Some examples of supportive services include speech and language therapy, psychological services, physical and occupational therapy, social work services, and counseling services.

Where will my child receive this special education?

If, however, your child’s disability is so severe that education in the regular classroom, even with supplementary aids and services, cannot be satisfactorily achieved, your child should receive services in a more restrictive environment. Accordingly, the **local educational agency (LEA)** must offer a continuum of placements for children, including:

- Instruction in the regular classroom (modified with appropriate aids and services);
- Related services, resource specialist services (often called “pull-out” services because children are usually “pulled out” of the classroom to receive them);
- Instruction in special day classes and centers;
- Instruction in state special schools;
- Home instruction;
- Out-of-home placement and instruction in a residential facility such as a hospital or other institution; and
- Placement in an appropriate nonsectarian, nonpublic school.

Not all disabilities are easy to recognize. Learning disabilities, in particular, may be difficult to identify, especially since children with learning disabilities often have average or above average intelligence. Yet intelligence alone is not enough to guarantee success in school. Without special services, children with learning disabilities may have difficulty learning and may become frustrated and choose to skip class or even drop out of school.

How will I know if my child needs special education?

Both state and federal law list specific disabilities that entitle a student to special education services. These disabilities include: (1) mental retardation; (2) hearing impairment, including deafness; (3) speech or language impairment; (4) visual impairment, including blindness; (5) serious emotional disturbance; (6) serious orthopedic impairment; (7) other health impairment; (8) specific learning disabilities; (9) autism; and (10) traumatic brain injury.

Although your child’s school has a legal responsibility to identify students who are eligible for special education services, school personnel may not discover that your child needs help. **If you suspect that your child has a disability that entitles him or her to special education, it is critical that you request an assessment for your child to determine if your child’s problems in school are related to a disability that qualifies him or her for special education services.**

What is an assessment?

An assessment is the process by which trained evaluators determine whether or not your child is entitled to special education. This process involves tests, interviews, and observations. No matter what your child’s suspected disability is, part of the assessment will be psychological, part of it medical, and the rest will be designed to evaluate specific issues related to your child’s problems in school. (For example, if speech and/or language problems are an issue, a speech and language professional will participate in the assessment.) In addition, the assessment will identify the types of special education services your child may need.

Who can request an assessment?

A parent, teacher, or other service provider, such as a school psychologist or even your family physician, can make a request for an assessment (called a “referral for assessment”). A referral for assessment must be in writing and should be addressed to the LEA, usually your local school district.

A letter requesting a referral for assessment does not need to be detailed. It does need to state your child’s full name, date of birth, whether or not the child is currently enrolled in school, and, if he or she is in school, the name of the school being attended and whether or not the child has ever received special education services. You also should provide your name, address, and phone number so the LEA can contact you. Other than that, your request simply needs to state that your child is having learning problems that you think might require special education services and that you want an evaluation performed to determine your child’s eligibility for special education. Be sure to keep a copy of your referral letter.

Although your letter can be delivered to your child’s teacher or school principal, if your child is not enrolled in school, it should be addressed to your school district’s director of special education. If you do not find anything identified as “special education” among the phone book’s listings for your school district, look for something like “Programs for Exceptional Children,” which is often what special education departments are called.

What happens after the referral for assessment?

A parent must be given a written proposed assessment plan within 15 days of the LEA’s receipt of the referral for assessment. It must be in the parent’s primary language and worded so that it is easy to understand. It must specify the types of assessments to be conducted and state that no special education services will result from the assessment without further written consent from the parent.

With the assessment plan, parents must receive a copy of the notice of parental rights, including a written explanation of the safeguards that exist under state and federal law. A parent has 15 days to decide whether to sign and thereby agree to the proposed assessment plan.

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What can I do if the assessment determines that my child is not eligible for special education services and I disagree?

What happens if the assessment determines that my child is eligible for special education and I agree with that conclusion?

Will my child ever be reassessed?

What is an IEP?

Once your child is receiving special education, the LEA must conduct reassessments every three years. These reassessments are called triennial reviews. If necessary, a teacher, parent, or caregiver may request a reassessment sooner.

The term “IEP” (or “individualized education program”) describes both a process and a document. Once your child is found eligible for special education, you will participate in the process by attending an IEP meeting at your child’s school at least once a year. At this meeting, you and the other members of the IEP team will write an IEP document that describes your child’s exceptional educational needs and what services will be provided to meet those needs. This document is developed, reviewed, and revised according to specific guidelines. It should include:

- A statement of your child’s present levels of educational performance;
- A statement of measurable goals including benchmarks and short-term objectives;
- A statement of the special education and related services that your child needs;
- An explanation of the extent to which your child will not participate with nondisabled children; and
- Projected dates for services to begin.

Who develops the IEP?

- The parent(s) of the child with the disability;
- At least one regular education teacher, if the child may be participating in the regular education environment;
- At least one special education teacher or provider;
- A representative of the LEA;
- An individual who can interpret the instructional implications of assessment results;
- At the discretion of the parents or LEA, other individuals who have knowledge or special expertise about the child; and, when appropriate; and
- The child, if appropriate.

How will I know about the IEP meeting?

If you disagree with the LEA’s assessment, you have the right to obtain an independent assessment from qualified specialists, at public expense.

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As the child’s parent or surrogate parent, you should be actively involved in this process and are required to be a member of the IEP team. The IEP team consists of the following people:

- The parent(s) of the child with the disability;
- At least one regular education teacher, if the child may be participating in the regular education environment;
- At least one special education teacher or provider;
- A representative of the LEA;
- An individual who can interpret the instructional implications of assessment results;
- At the discretion of the parents or LEA, other individuals who have knowledge or special expertise about the child; and, when appropriate; and
- The child, if appropriate.

The LEA must notify you of any IEP meeting in advance. The meeting must be scheduled at a mutually agreed upon time and place.

How quickly after the IEP meeting will my child receive help?

mented as soon as possible. If you do not consent, your child will not participate in the special education program.

How often will my child’s IEP be reviewed?

request that an IEP addendum meeting be held. Once the LEA receives your request, the meeting must be held within 30 days.

What if my child behaves in ways that are self-injurious, assaultive, or destructive?

Because such behavior may interfere with your child’s IEP goals, the LEA is required to develop **behavior intervention plans** for serious behavior problems that are self-injurious, assaultive, destructive, or maladaptive. A behavioral plan is intended to bring about positive behavioral changes. It should be incorporated into the child’s IEP. If a detailed behavior intervention plan is in place, any misconduct the student engages in will probably be viewed as a manifestation of his or her disability, and the school’s disciplinary procedures will be applied in a modified fashion.

What if my child is in special education and is suspended from school?

A student may be suspended from school if the principal determines that the student has committed any of the acts described in section 48900 of the California Education Code. Suspension should only be imposed when other means of correction fail to bring about proper conduct. Suspension rules apply to special education students just as they apply to nondisabled students. However, even if a special education student poses a physical threat, he or she may not be suspended for more than 10 consecutive school days.

What if my child is in special education and is expelled from school?

Section 48915 of the California Education Code provides the grounds for expulsion. There is some overlap between the offenses listed in the suspension and expulsion provisions. A student in special education may not be expelled until a pre-expulsion assessment has been conducted.

Who participates in the pre-expulsion assessment?

The matter is referred to the IEP team, and an IEP meeting is held. The team, and not the school, determines whether the student should be expelled. The child’s parent has the right to participate in the pre-expulsion assessment meeting.

What does the IEP team assess at the pre-expulsion meeting?

At the pre-expulsion assessment the IEP team reviews the appropriateness of the student’s placement at the time of the misconduct and the relationship, if any, between the student’s behavior and his or her disability. The team must determine if the misconduct was caused by or was a direct manifestation of the student’s identified disability. This is called **a manifestation determination**.

SPECIAL EDUCATION RIGHTS FOR CHILDREN

AND FAMILIES



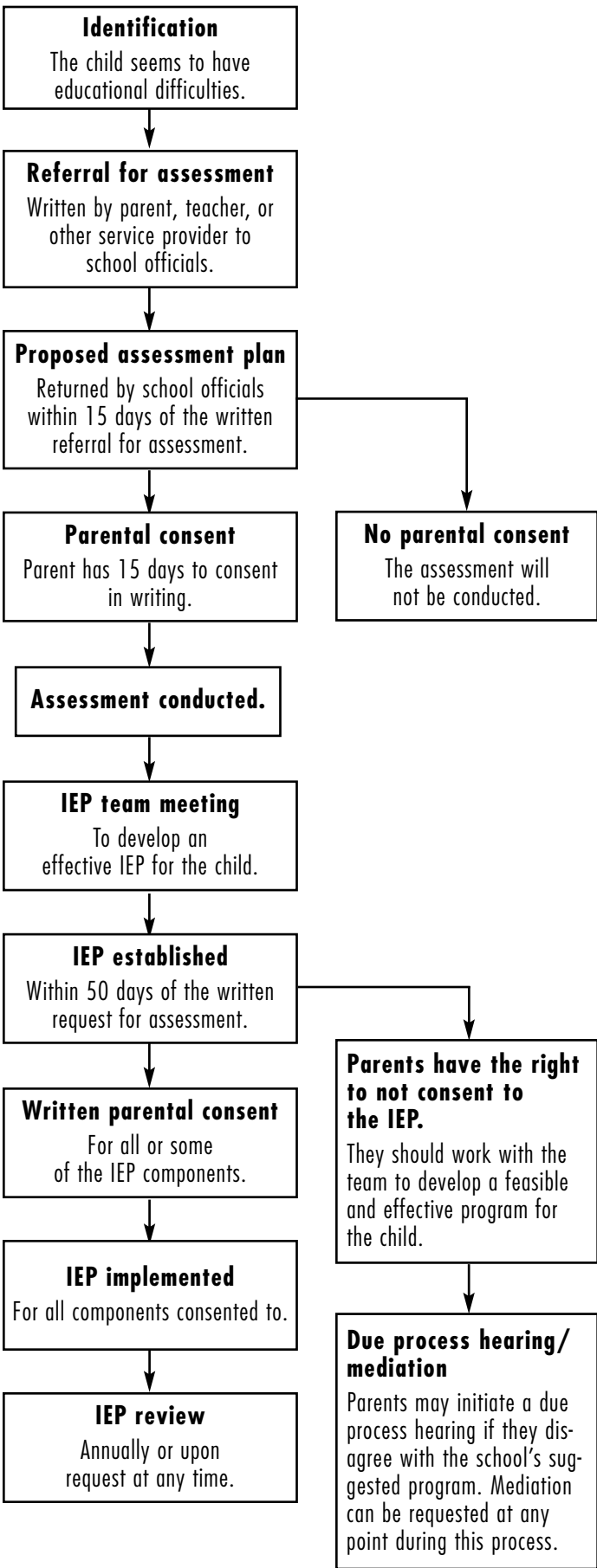
If you are a parent, foster parent, guardian, or other caregiver of a school-age child who is under the jurisdiction of the juvenile court and is doing poorly in school, this pamphlet is for you.* It provides information about special educational services, mandated by certain federal and state laws, that might help your child if he or she is found eligible to receive them.

There are many reasons why a child might do poorly in school or not want to attend school regularly. Poor performance with schoolwork may be due to behavioral problems, emotional problems, language problems, medical problems, or learning disabilities. Your child may need special education services if he or she:

- ◆ Has difficulty reading, writing, or doing math;
- ◆ Has a hard time sitting still, concentrating, and following directions;
- ◆ Has problems with speaking or pronunciation;
- ◆ Often forgets where things are;
- ◆ Loses track of time;
- ◆ Has difficulty understanding concepts such as up and down, left and right, or front and back;
- ◆ Has problems with motor skills such as holding a pencil;
- ◆ Has trouble with personal routines for daily living; or
- ◆ Seems withdrawn or has trouble making friends.

* Certain legal rights are given only to the child's parents and formally appointed surrogate parents. Information about surrogate parent appointment is provided later in the pamphlet.

Assessment and Individualized Education Program (IEP) Timeline



During the administrative hearing, the parent or surrogate parent, as well as the LEA, has the following rights:

- ◆ The right to be accompanied by an attorney or other expert;
- ◆ The right to present, confront, cross-examine, and compel the attendance of witnesses;
- ◆ The right to a written or electronic record of the hearing;
- ◆ The right to prohibit the introduction of evidence that has not been disclosed at least five days before the hearing; and
- ◆ The right to written or electronic findings of fact and a decision within 45 days after the LEA has received the hearing request
- ◆ The right to receive reasonable attorney fees if you are the prevailing party.

Where can I receive more information or assistance?

Contact the National Information Center for Children and Youth With Disabilities (NICHCY) at P.O. Box 1492, Washington, D.C. 20013 or by telephone at 800-695-0285 to find out about their extensive, nationwide listing of resources. You can also get this list from NICHCY's Web site www.nichcy.org. If you do not have access to the Internet, consult your local library.

WHEN PARENTS ARE UNABLE TO ADVOCATE FOR THEIR CHILD

Parents are not always available to advocate for their child's educational rights and needs, and persons who do not have legal custody of the child cannot do so on their behalf. In these situations:

- ◆ You can designate someone else to undertake these responsibilities.
- ◆ The judge can limit your right to make educational decisions for your child and recommend that someone else be designated to undertake those responsibilities.

A person who substitutes for you as an advocate for your child's educational rights and needs is called a **surrogate parent**.

When Parents Do Not Choose a Surrogate Parent

If you do not designate someone to be your child's surrogate parent, then the LEA will select someone to undertake your responsibilities. Even when a judge issues an order taking away your educational decision-making rights and recommends that a surrogate parent be designated, he or she cannot appoint the surrogate. Only the LEA can appoint a surrogate parent.

The LEA must select, listed in order of priority, one of the following individuals if they are willing and able to serve: (1) the child's relative caregiver, (2) the child's foster parent, or (3) the child's Court Appointed Special Advocate (CASA). If none of these persons are willing and able to serve, the LEA will select a surrogate of its choice, excluding an employee of the LEA or anyone else with a conflict of interest. *Relative caregivers, foster parents, CASAs, and other interested individuals are encouraged to seek formal surrogate parent appointment. This will ensure that all rights afforded to a parent regarding the child's education will then be afforded to the surrogate.*

What the Surrogate Parent Does

The surrogate parent serves as your child's parent for the limited purpose of making sure your child receives a free, appropriate public education (FAPE). This person has the same educational rights and responsibilities as you would have. The surrogate parent represents the child in all educational matters relating to:

- ◆ Special education identification;
- ◆ Educational assessments;
- ◆ Instructional planning and development;
- ◆ Educational placement;
- ◆ Reviewing and revising the IEP; and
- ◆ All other matters relating to the provision of a FAPE for the child.

What if I disagree with the conclusions of the team?

If you disagree with the team's conclusions—either about the appropriateness of your child's placement or the manifestation determination—or with its decision to rely on certain information, you have the right to request an administrative due process hearing.

What if the team determines that the misconduct was not a manifestation of my child's disability?

If the team determines that the conduct was not a manifestation of your child's disability and that the placement was appropriate, then your child will be subject to regular discipline procedures, including expulsion, if afforded due process.

What if the team determines that the misconduct was caused by my child's disability?

If your child's conduct was a manifestation of his or her disability, or the placement was not appropriate at the time of the misconduct, your child cannot be expelled.

What if my child has not yet been found eligible for special education?

If your child has not been found eligible for special education and has engaged in misconduct, the child may still assert protections if the LEA had knowledge that the child had a disability prior to the disciplinary action. The LEA is deemed to have had knowledge of the disability if (1) the parent had expressed concern in writing or submitted a request for an assessment;

(2) the misconduct demonstrates the need for services; or (3) the child's teacher or other LEA employee had expressed concern about the child's behavior to the director of special education or other personnel.

What safeguards exist for parents and surrogate parents?

With respect to the provision of a free, appropriate public education, federal and state law afford parents and children certain safeguards. These include:

- ◆ The right to examine all records relating to your child;
- ◆ The right to participate in all meetings related to the identification, evaluation, and educational placement and program of your child;

- ◆ Procedures to protect a child's rights when the parents are not known or cannot be found pending the appointment of a surrogate parent;

- ◆ The right to prior written notice in the parents' native language when a LEA proposes or refuses to initiate change in the identification, evaluation, or educational placement of a child;

- ◆ The right to mediation; and

- ◆ The right to present complaints about the identification, evaluation, or educational placement of your child.

A parent or surrogate parent may initiate an administrative due process hearing pertaining to the identification, evaluation, educational placement of the child, and/or the provision of a FAPE. The impartial hearing (often called a "fair hearing") is conducted by the state and can be attended by the child as well as the parent(s). Mediation can be requested at any point in the hearing process.

LEGAL REFERENCES

This pamphlet is based on laws in effect at the time of publication (December 2000). Federal and state laws can change at any time. You may want to consult the following legal references.

Federal Laws & Regulations: Individuals With Disabilities Education Act (IDEA), 20 United States Code section 1400 et seq.; federal regulations relating to the IDEA, 34 Code of Federal Regulations section 300.1 et seq.

State Laws: California Education Code sections 56000 et seq. (on special education) and sections 48900 et seq. (on school discipline); California Government Code section 7579.5 (on surrogate parents).